

SPECIAL CIVIL APPLICATION NO. 6972 OF 1996.

Date of decision: March 10, 1997

For approval and signature of

The Honourable Mr. Justice R. R. Jain

Mr. Navin Pahwa, for Thakkar Associates, for petitioners.

Mr. T.H. Sompura, A.G.P. for respondent No.1-State.

Mr. B. R. Kyada, advocate for respondent No.2.

Mr. H. S. Munshaw, advocate for respondent No.3.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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March 10, 1997

Oral judgment:

Heard Mr. Pahwa, learned advocate for the petitioners and Mr. Sompura, learned A.G.P. for respondent No.1, Mr. Kyada, learned advocate for respondent No.2 and Mr. Munshaw, learned advocate for respondent No.3.

Petitioners are owner of land bearing Survey No. 177/1

admeasuring about 2984 sq.mt., situated at village Mahika, Taluka and District Rajkot. It appears that the petitioners applied to the Development Authority for development of the said land and the Development Authority, respondent No.3, granted permission vide letter No. 680/92 156/93 /91 dated 1.6.1993 for limited purpose of dividing the said land into subplots for residential purpose. Copy of the permission has been produced on record at Annexure A. As regards grant of permission as above, there is no dispute between the parties. On perusal of permission, it appears that even the development permission referred to above for limited purpose was also subject to several terms and conditions mentioned therein. Vide condition No.4, it has been abundantly made clear that the permission is granted for the limited purpose of sub-plotting only and that in the event of making construction, prior permission from appropriate authority would be necessary. Condition No.1 printed on the backside makes it clear that if the land is situated within and covered by Town Planning Scheme and if the Appropriate Authority under the Town Planning Scheme grants Development Permission then also permission under section 65 of the Bombay Land Revenue Code (hereinafter referred to as the "Code" for short) shall have to be obtained. It is the contention of the petitioners that under law they are not required to obtain any permission under Section 65 of the Code. Despite this contention, the respondent authorities have insisted upon the petitioners to obtain permission under section 65 of the Code and as the petitioners have failed, the respondent No.2 vide its letter dated 30.4.1996 has rejected the petitioners' application and respondent No.3 vide its letter dated 2.8.1995 has rejected the original permission dated 1.6.1993 for development of the land for limited purpose of sub-plotting, contending that permission under Section 65 of the Code has not been obtained. Aggrieved by both these orders, the petitioners have filed this writ petition.

In this case, there is no dispute about the fact that the respondent No.3 has granted permission for development for a limited purpose of dividing the said land in subplots. In the permission itself it has been made clear that permission for limited purpose shall not be construed as permission for construction and if at all the petitioners make construction shall have to obtain permission from the appropriate authority in accordance with law. Thus, it is clear that division of the land into sub-plots simpliciter does not change the nature of use as sub-division simpliciter would not amount to use

of land for non-agricultural purpose. In my view, with this permission for limited purpose, insistence of the respondents for obtaining permission under Section 65 of the Code is arbitrary, illegal and de hors the provisions of law. Mr. Pahwa for the petitioners has also relied upon judgment in the case of Karimbhai K. Belim v. State, 1996 (1) G.L.R. 659, and this decision also partly lends support to my aforesaid view. Under these circumstances, the condition No.1 requiring the petitioners to obtain permission under Section 65 of the Code deserves to be struck down. The learned advocates for the respondents also have fairly conceded that sub-plotting of land simpliciter would not amount to change of use consequently insistence for obtaining sanction under Section 65 of the Code would be unfair and improper.

The impugned order dated 30.4.1996 passed by respondent No.2 and the order dated 2.8.1995 passed by respondent No.3 rejecting the petitioners' permission are passed in the background that the petitioners have not obtained sanction under Section 65 of the Code from the appropriate authority. In the facts and circumstances of this case, the orders are not sustainable at law and deserve to be quashed and set aside.

As regards rest of the terms and conditions mentioned in the letter of sanction dated 1.6.1993, there is no challenge and remain in force. Mr. Pahwa has also fairly conceded that permission refers to dividing the land into subplots only. Mr. Pahwa has no dispute about condition No.4 which requires the petitioner to obtain prior permission for the purpose of putting up construction.

In the result, the petition is allowed. Order dated 30.4.1996 passed by respondent No.2 and order dated 2.8.1995 passed by respondent No.3 are quashed and set aside. Rule is made absolute with no order as to costs.